Filed 4/10/15 P. v. Colon CA6

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. MATTHEW ANTONIO COLON, Defendant and Appellant.	H041096 (Santa Cruz County Super. Ct. No. F26078)

By letter dated December 8, 2014, this court invited defendant Matthew Antonio Colon to submit arguments on his own behalf because his appointed appellate counsel filed a brief which did not identify any arguable appellate issues. Defendant has submitted a letter in response, which we have reviewed along with the entire record to determine whether appointed counsel has correctly determined there are no arguable issues. (*People v. Wende* (1979) 25 Cal.3d 436, 441.) We present here a brief description of the facts, the procedural history, the crimes of which defendant was convicted, and the punishment imposed, and we address the contentions personally raised by defendant. (*People v. Kelly* (2006) 40 Cal.4th 106, 124.)

The following evidence was introduced at a preliminary hearing. Shortly before midnight on December 23, 2013, Santa Cruz County Sheriff's Deputy Brian Lande responded to a domestic disturbance call from an apartment. Defendant was walking away from the apartment when Lande arrived. After defendant got into a van, Lande spoke to him to see what he knew about the disturbance. As they spoke, Ann Hanly

approached from the direction of the apartment, crying and hyperventilating, and displayed a bruised right eye. She identified defendant as the perpetrator. Lande detained defendant in the back of his patrol car and obtained medical assistance for Hanly and also for defendant, who had an injured finger.

After Hanly was treated at the scene and calmed down, she explained to Lande that she and defendant had dated for two months, had known each other for three months, but had not been seeing each other for the last month. However, that evening he visited her two-story apartment and they ate together. She confronted him about his apparent drug use and asked him to leave. Defendant became upset and they exchanged words. He followed her upstairs and grabbed an arm that was recuperating from surgery and she asked him to let go. He pushed her onto a bed, grabbed her head with both hands, effectively choking her, shaking her, and hitting her head on the bed. He let go of her head when she bit one of his hands. Downstairs, he punched her face four or five times with a closed fist before leaving.

Deputy Lande arrested defendant and transported him to jail. Defendant was very concerned and apologetic about Hanly's condition. He admitted being upset and could not recall how many times he had struck her. He said he did not intend to hurt her.

The above conduct led to an information charging defendant with injuring a cohabitant (count 1; Pen. Code, § 273.5, subd. (a))[1], false imprisonment by violence (count 2; § 236), and forcible assault (count 3; § 245, subd. (a)(1)). The information also alleged a prior prison term (§ 667.5, subd. (b)) following a January 2012 conviction for selling or transporting a controlled substance (Health & Saf. Code, § 11352) and a prior

[1] Unspecified section references are to the Penal Code.

strike conviction from November 2013 for making criminal threats (§§ 422, 667, subds. (b) - (i)).[2]

At a pretrial hearing on February 27, 2014, over the prosecutor's objection, the court indicated that if defendant admitted all charges, it would impose a sentence of five years eight months after striking defendant's prior strike conviction, representing "the maximum term possible." It was explained that execution of the sentence would be suspended if defendant was accepted into the Delancey Street rehabilitation program. The prosecutor stated that count 3, being an alternative to count 1, would be dismissed at sentencing. After defendant expressed confusion about the court's indicated sentence, defense counsel prepared a written change of plea form signed by the judge and defendant by which defendant entered no contest pleas to all counts and admitted the prior conviction and prison term.[3]

Defendant was not accepted into the Delancey Street program. On May 8, 2014, he was sentenced to the indicated sentence of five years, eight months in prison, consisting of the upper term of four years for injuring a cohabitant (count 1), plus a consecutive term of eight months (one-third the midterm) for false imprisonment (count 2), with a one-year enhancement for the prior prison term. The court imposed but stayed

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[2] According to the probation report, defendant had been on probation in the November 2013 case for the misdemeanors of stealing a car (Veh. Code, § 10851), entering a law firm and brandishing a knife (§ 417, subd. (a)(1)) and the felonies of threatening an employee of the firm and the arresting officer (§ 422), and resisting arrest (§ 69.) The same judge sentenced defendant in this case and in the 2013 case. While the probation report listed the section 422 conviction as a misdemeanor, the judge at sentencing in this case indicated that in the previous case he had come close to reducing the section 422 conviction to a misdemeanor.

[3] We note that, while the sentence imposed conformed to the court's indication, the change of plea form prepared by defense counsel included an apparent clerical error that misstated what allegations the court and the prosecutor intended to dismiss. We see no negative impact on defendant from the error in the record.

a four-year upper term on count 3 under section 654. The court dismissed the prior strike allegation. Defendant was awarded 272 days of presentence credits under section 4019, half of them actual days. The court imposed a restitution fund fine of $1,500 with an equivalent stayed postrelease community supervision fine under section 1202.45, subdivision (b), a "court security fee" under section 1465.8, subdivision (a)(1) of $40 for each conviction totaling $120, and a facility assessment ("critical needs fee") under Government Code section 70373 of $30 for each felony conviction totaling $90. The court also issued a 10-year restraining order under section 273.5, subdivision (j).

On June 11, 2014, defendant filed a notice of appeal alleging judicial error that "arose after the entry of pleas of nolo contendere and does not challenge the validity of the pleas."

At a hearing on July 24, 2014, the court recalled defendant's sentence in his absence and acknowledged that the imposed sentence did not conform to the indicated sentence, because count 3 should have been dismissed, as appellate counsel had pointed out. The court dismissed count 3 on the prosecutor's motion and reduced the court security fee to $80 and the critical needs assessment to $60 based on two conviction counts rather than three. A corrected abstract of judgment was filed. On August 21, 2014, defendant filed a notice of appeal from the new judgment limited to "matters that occurred after entry of the plea and or admission and which do not affect their validity."

At a hearing on November 4, 2014, at the request of appellate counsel the court recalculated defendant's actual credits as of the date of his resentencing and awarded defendant 136 days of conduct credit and 213 days of actual credit. A corrected abstract of judgment was filed.

We note that a plea of guilty or no contest precludes appellate claims of innocence or insufficient evidence of guilt. The failure to obtain a certificate of probable cause after a plea of guilty or no contest further limits what issues may be raised. (§ 1237.5; Cal. Rules of Court, rule 8.304(b)(4)(B).)

Defendant has requested "complete confidentiality" for the contents of his letter, and disposition of his appeal does not require that we recite the details of his complaints here. In general, he asks for a review of the practices of the entire legal system in Santa Cruz County, including judges, law enforcement officers, the Public Defender and the District Attorney and their employees, and confidential informants. We see no details bearing on this appeal. If defendant seeks to raise facts not appearing in the record, they must be presented by petition for writ of habeas corpus and not by appeal. (*In re Bower* (1985) 38 Cal.3d 865, 872.)

As our review of defendant's letter and the record on appeal reveals no arguable issue, the judgment is affirmed.

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Grover, J.

WE CONCUR:

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Rushing, P.J.

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Márquez, J.